

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Broadband Personal Communications) WT Docket 97-82
Services ("PCS") C and F Block)
Installment Payment Issues)

To: Daniel Phythyon, Acting Chief
Wireless Telecommunications Bureau

REPLY COMMENTS

CONXUS Communications, Inc. ("CONXUS"), pursuant to Public Notice (DA 97-679) dated June 2, 1997 and by counsel, respectfully submits its reply comments after a review of the comments which were filed on June 23, 1997 in connection with issues that have been raised in regard to the terms and conditions of the installment payments owed by the broadband PCS C and F Block licensees to the U.S. government.

Unlike the majority of parties which filed comments, CONXUS neither opposed nor supported any one of the specific proposals propounded by the various interested groups in its initial comments. CONXUS is concerned that if relief were to be provided to the C and F Block broadband PCS licensees without a proportionate, corresponding relief provided to similarly-situated narrowband PCS licensees, the Commission by regulatory decree would provide a competitive advantage to the broadband PCS licensees over narrowband PCS licensees. Consequently, its

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comments focused on bringing to the FCC's attention the similarities between the two PCS services¹ and ensuring that these two competing services are regulated similarly.²

CONXUS, as a licensee similarly situated with a majority of the C and F Block broadband PCS licensees, would not object to a delay or a deferral in having to pay its obligations to the FCC. CONXUS disagrees with those commenters which argue

¹ The two PCS services provide or will provide, in part, the same services, *i.e.*, wireless voice messaging; target the consumer by mass marketing; have substantial capital requirement to finance the implementation of their systems; and are accessing the same capital fund pool. See Comments of CONXUS filed June 23, 1997 (WT Doc. 97-82).

² The competitive bidding rules governing eligibility and financial preferences for Designated Entities for C and F Block broadband PCS licenses when initially adopted in August 1994 were similar to those governing the eligibility and financial preferences for Designated Entities for regional narrowband PCS licenses. See Fifth Report and Order (FCC 94-178), 9 FCC Rcd 5532 (1994); 47 C.F.R. § 24.320 (1994). The Control Group Structure requirements were identical in both the narrowband and broadband PCS rules. Id. On November 10, 1994, after the close of the regional narrowband PCS auction, the Commission amended these broadband PCS rules and modified the Control Group Structure provisions to facilitate and promote investment by institutional investors in the C and F Block broadband PCS applicants. See Fifth Memorandum Opinion and Order (FCC 94-285), 10 FCC Rcd 403 (1994); and Erratum (released January 10, 1995) ("Fifth MO&O"). In addition more generous installment payment plans were adopted in the Fifth MO&O. Id. In July 18, 1995, in light of the Adarand decision, 115 S.Ct. 2097 (1995), race and gender preferences were eliminated from the broadband PCS competitive bidding rules. See Sixth Report and Order (FCC 95-301), 11 FCC Rcd 136 (1995). The narrowband PCS competitive bidding rules were not similarly modified, although CONXUS was advised orally by the Commission staff that such modifications would be initiated. Nevertheless, in the most recent notice of proposed rule making relating to the narrowband PCS competitive bidding rules, the Commission failed to address CONXUS' numerous pleadings asking for equivalent regulatory treatment of narrowband and broadband PCS Designated Entity licensees/applicants. See Report and Order and Further Notice of Proposed Rule Making (97-140), 12 FCC Rcd __ (1997).

that the Commission must initiate a rule making proceeding and may not restructure the installment payment plans on its own motion or by grant of a rule waiver.³

Neither Sections 1.2110(e), 24.309(b)(1) or 24.711(b) of the Commission's rules specify that installment payments must be made on a quarterly basis. FCC Rule Section 1.2110(e)(3) provides that "upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment plan." Moreover, FCC Rule Section 1.2110(e)(4)(ii) implicitly provides the Commission authority to restructure a licensee's payment plan:

If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.

CONXUS, therefore, contends that the Commission has the authority, under the rules, to determine the timing of installment payments and may, at its discretion, restructure the installment payment plan of an individual licensee or a group of licensees merely by notification. There is nothing within the Commission's rules or Congressional mandate⁴ which would require a C or F Block broadband PCS licensee or a similarly-situated narrowband PCS licensee to make quarterly installment

³ See Comments of Nextel Communications, Inc.; Community Service Communications, Inc.; Pioneer Telephone Association, Inc.; Cook Inlet Region, Inc. et. al.; and NorthCoast Communications, LLC (filed June 23, 1997, WT Doc. 97-82).

⁴ See Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, Title VI, § 6002(b), 108 Stat. 312 (1993).

payments. While the rules may contemplate at least yearly installment payments,⁵ the rules also provide the Commission with discretion to determine the terms of the installment payment plan. Thus, the Commission is not required to initiate a rule making proceeding to restructure the terms of the installment payment plans nor is a waiver of a Commission rule required.

CONXUS supports a deferral of installment payments so long as narrowband PCS licensees with installment payment obligations are provided the same relief. During the first four to five years, a start-up business requires its capital funding, debt funding and cash flow to acquire the infrastructure, design and construct the system, and procure a customer base. After the five-year point, most start-up businesses will have "free" cash flow, which could then be used to begin to pay off the principal amount of the license(s) acquired and the interest accrued thereon. Thus, a Commission decision which modified installment payment plans to forgo payments until the fifth or sixth year of a license term would permit companies to use their capital to construct and implement their systems and begin service to the consumer and generate "free" cash flow to re-pay to the government their obligations.

During the deferral period, interest would continue to accrue; the U.S. Treasury would receive full payment of a licensee's obligations. Thus, the public interest would not be harmed as full value would be paid for the spectrum as bid by a particular licensee. As the amount of revenues to the U.S. Treasury was not to be a

⁵ See, e.g. FCC Rule Sections 1.2110(e)(3)(iii) ("...begin with interest-only payments for the first two years...."); 24.711(b)(3) ("...payments shall include interest only for the first six years....").

determining factor as to whether to auction spectrum or not,⁶ the timing of receipt of revenues also should not be a critical factor in determining whether to defer installment payments. Further, one of the objectives in licensing spectrum by auctions was to expedite new services offerings to the consumer who would enjoy the benefits of competition in the marketplace.⁷ The Commission could facilitate achievement of this goal by deferring installment payments and permitting licensees to commit resources to implementing the system as opposed to paying for the license.

There also is support for more significant relief to the C and F block broadband licensees which would result in a reduction in the principal amount owed for the license. Implementation of such proposals, though providing effective relief to the C and F block broadband PCS licensees, may result in the Commission being unable to craft proportionate relief to competing licensees to counter the competitive advantage the C and F block broadband PCS licensees may receive. CONXUS does not advocate the demise of C and F block broadband PCS licensees as too many failures of such entities may adversely affect the capital market's decision to invest in new technology services, such as narrowband PCS. CONXUS merely suggests that the Bureau should ensure that the relief afforded C and F block broadband PCS licensees not destroy the regulatory symmetry between similar mobile services and unfairly promote one service in the marketplace over another similar service.

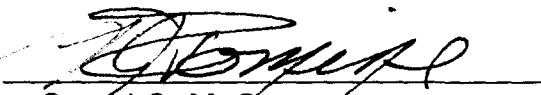
⁶ 47 U.S.C. §§ 309(j)(7)(A) & (B).

⁷ See 47 U.S.C. § 309(j)(3); Second Report and Order (FCC 94-61), 9 FCC Rcd 2348, ¶¶ 3, 7 (1994; and Erratum (released May 12, 1994).

The Commission must treat equitably and fairly all similarly-situated licensees. CONXUS asks that if the Commission provides any general relief to all C and F block broadband PCS licensees, it afford the same or proportionate relief to CONXUS and other similarly-situated narrowband PCS licensees.

Respectfully submitted,

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Date: July 8, 1997

CERTIFICATE OF SERVICE

I, Patricia E. Edwards, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this July 8, 1997, caused to be hand-delivered a copy of the foregoing Reply Comments to the following:

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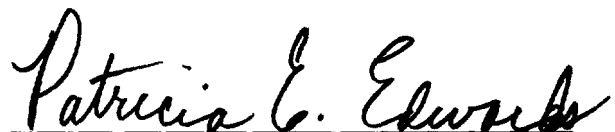
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